Supreme Court, U.S.
FILED
JUL 25 2003

No. 03-155

In The

Supreme Court of the United States

SHANE AUGUST MESSICK,

Petitioner,

v.

THE STATE OF GEORGIA,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Georgia

PETITION FOR A WRIT OF CERTIORARI

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53 pp

I. QUESTIONS PRESENTED FOR REVIEW

1. Is it a harmful violation of the First and Fourteenth Amendments for a trial court to instruct and order a jury to stand and state a loyalty oath during the prosecution case?

2. When a prosecutor stipulates that the boots of the accused did not make a bloody footprint at the crime scene, is it a violation of Fourteenth Amendment Due Process and the right of the accused to confront his accuser for a trial court to allow the prosecutor to suggest in closing that the foot print was in fact that of the accused?

3. Is it a harmful violation of the Fourteenth Amendment Due Process Clause when a trial court refuses to admit hearsay admissions by a witness who killed himself as he was to travel to testify at trial when the admissions rebut hearsay statements in evidence?

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IV. BASIS FOR JURISDICTION OF THIS COURT

A. Date of Orders to be Reviewed

On April 29, 2003, the Georgia Supreme Court affirmed Petitioner's conviction, rejecting the three issues presented in this petition. *Messick v. The State of Georgia,* Supreme Ct. S03A0017 29 *April 2003* (App.-1-5). *The State of Georgia v. Messick*, Polk County Superior Court Case No. 98-CR-386 *Trial Proceedings 9-13 October 2000* (App.-16-34).

B. Jurisdictional Basis For Review

Under the provisions of 28 U.S.C. §1257(a), this Court has jurisdiction to review the final judgment of the highest court of a State when that decision is alleged to be repugnant to the Constitution.

C. Constitutional Provisions, Statutes and Rules

This Petition involves the Due Process Clause of the *Fourteenth Amendment to the United States Constitution,* the *First Amendment to the United States Constitution* and the *Sixth Amendment to the United States Constitution*, and Georgia hearsay statutes O.C.G.A. §24-3-8 and §17-8-75.

The *First Amendment to the United States Constitution* states as follows:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

The *Fourteenth Amendment to the United States Constitution* states in pertinent part,

> " . . . nor shall any State deprive any person of life, liberty, or property, without due process of law."

The *Sixth Amendment to the United States Constitution* states in pertinent part,

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . and to be . . . confronted with the witnesses against him. . . ."

O.C.G.A. §24-3-8 provides as follows:

> "Declarations and entries made by a person since deceased against his interest and not made with a view to pending litigation shall be admissible in evidence in any case."

O.C.G.A. §17-8-75 provides as follows:

> "Where counsel in the hearing of the jury make statements of prejudicial matters which are not in evidence, it is the duty of the court to interpose and prevent the same. On objection made, the court shall also rebuke the counsel and by all needful and proper instructions to the jury endeavor to remove the improper impression from their minds; or, in his discretion, he may order a mistrial if the prosecuting attorney is the offender."

V. STATEMENT OF THE CASE

Petitioner was indicted in special presentment by a Polk County Georgia Grand Jury, along with Jamie Luther

Crawford, on July 21, 1998 in six counts for malice murder, felony murder and aggravated assault, upon Brandi Hampton and Thomas James Hampton. In addition Petitioner was charged in a seventh count with cruelty to Thomas James Hampton, Jr., a child who was alleged to be present. (R-11). After Jamie Luther Crawford pled guilty, the state tried Petitioner from September 10, 2001 through September 21, 2001.

In pretrial proceedings, Petitioner moved to restrict the prosecution from arguing facts not in evidence. (App.-12-14). The trial court adopted Petitioner's Motion and ordered the state and Petitioner in limine to refrain from stating facts not in evidence. (Mot.Tr. 11/1/99-112) (App.-16).

Petitioner was convicted of counts one and two, malice murder of Brandi and Thomas James Hampton and count seven, cruelty to James Hampton, Jr. (T-1434; R-44). The jury then retired and found that Petitioner should be sentenced to life sentences with parole eligibility. (T-1526; R-48). The trial court sentenced Petitioner to two consecutive life sentences and in count seven to twenty years concurrent to the first life sentence. (T-1532; R-54).

Petitioner timely moved for a new trial, raising each issue in this petition. (R-55, 60). On 25 June 2002, Petitioner's amended motion for new trial was denied. (Supp.R-1, App.-10). Petitioner timely appealed the trial court order, and on 29 April 2003, the Georgia Supreme Court affirmed Petitioner's conviction. (App.-1).

VI. STATEMENT OF MATERIAL FACTS

In statements, Petitioner consistently denied being at the scene of the murder.(State Ex. 58, 62-A-7, 65-A-5,6, 67-A-4). No collection of hair was analyzed from the murder scene (T-351,352). No fingerprint evidence linked Petitioner to the site. (T-358).

At trial, State's exhibit number 30 was introduced and admitted without objection as a photo of the partial foot print impression with a scale introduced on a ruler to show size.(T-279,303). A transcript of an undercover tape was introduced in which the Petitioner stated, "They said they had a bloody footprint", (T-612, Ex. 65a, p.4). State's witness Jamie Crawford testified that he had worn a pair of boots and that Petitioner burned the clothing used at the crime at Eddie Welchel's house, but not the boots. (T-911,965,979).

At the close of the prosecution case, the parties entered into a stipulation as follows:

> "The State and Defense further stipulate that the shoes/boots seized from Shane August Messick on or after July 9, 1998, were visually compared to the bloody shoe impression on a piece of carpet from the crime scene. There was sufficient evidence to conclude that the boots of Shane August Messick did not make the impression. The shoes or boots seized from Jamie Crawford could not be eliminated as having made the bloody shoe impression on the piece of carpet from the crime scene." (T-1078,1079, App.-27).

In closing, the prosecutor stated as follows:

> "But the point is, it certainly could have been Jamie Crawford stepping in the blood, and it

> could be Shane Messick's foot print in the blood. What does Shane say on the tape when they're out in the parking lot at Hon? I heard they've got a bloody foot print." (T-1380).

Patriotic music was regularly chimed from a local church and was audible to the jury throughout the trial. (NT-2,3). Shortly before the lunch break on Friday of the first week of trial, on the 14th of September 2001, the trial court gave a speech about the diversity and unity of Americans (T-572, App.-17-19). Then the trial court charged the jury as follows:

> "Now our president asked us to take a moment of silence at 12:00 noon – which it is now – today to – a show of solidarity for this country and in memory and honor of those who died in the recent attack on our way of life. So at this time, I'm going to ask us all to stand. And after we get through with our moment of silence, we're going to have a pledge of allegiance, and I want you to think about the pledge when you say it, instead of just reciting the words. Think about the words and what they mean. I pledge allegiance to the United States of America and to the republic for which it stands. One nation, under God – and there is no pause – one nation under God, indivisible, with liberty and justice for all. Let's all stand now and have a moment of silence." (T-572, App.-18, 19).

After the moment of silence, the trial court requested the District Attorney and bailiffs to lead the loyalty oath. (T-573, App.-19). Upon completion of the pledge, the trial court dismissed the jury for lunch. (T-573, App.-19). At the conclusion of the case, Petitioner reserved exceptions to

the charge of the Court until the transcript could be reviewed. (T-1420).

VII. ARGUMENT AS TO THE NECESSITY OF REVIEW

A. The Court Should Stop Lower Courts From Instructing Juries About Loyalty Oaths or Religion During Trial.

The trial court ordered the jury and Petitioner to stand and state the pledge of allegiance. In addition, the trial court gave instructions to the jury as to the method of stating the pledge. In those instructions, the Court told the jury there was no pause between "one nation" and "under God".

Petitioner made no objection at that time to the charge of the court as to the pledge. In light of the overwhelming public concern with security during the week of the trial, such an objection would have likely been harmful to the Petitioner. However, Petitioner reserved his objections to the Court's charge contained in the record at the end of the case. Under O.C.G.A. §5-5-24(c), which provides for appellate review in non-death penalty cases of charges which contain substantial and harmful error, regardless of whether an objection was made at trial, Petitioner shows that the Court's instruction was harmful.

In *West Virginia Bd. of Ed. v. Barnette*, 319 U. S. 624, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943), a West Virginia Statute requiring a pledge of allegiance and salute was held to violate *First Amendment* rights. There the Supreme Court of the United States stated, "[A] ceremony so touching matters of opinion and political attitude may [not] be imposed upon the individual by official authority under

powers committed to any political organization under our Constitution." 319 U.S., at 636. See also *Wooley v. Maynard,* 430 U.S. 705, 714, 97 S.Ct. 1428, 51 L.Ed.2d 752 (1977) ("Live Free or Die" license illegal forced speech). These cases relied upon the *First Amendment to the United States Constitution* and its ban on coerced speech.

In Petitioner's case, the trial court found fit to emphasize "One Nation under God", the phrase which the Ninth Circuit Court of Appeals found to make the pledge itself unconstitutional in *Newdow v. U.S. Congress*, 292 F.3d 597 (9th Cir. 2002).

The State of Georgia tried Petitioner, and the pledge was made to the United States sovereign, admittedly. However, the need for security provided by the government was palpable. Petitioner was on trial for murder, and as the patriotic chimes rang forth during trial and the non-sequestered jury returned home each day, it was daily reminded of the tragic nature of the week and the overt need for security following the 11th day of September, 2001. To drive the religious theme further, the prosecutor states, "the wages of sin is death" in his closing (T-1380; App.-34). A loyalty oath in the midst of trial further tipped balance away from Petitioner's liberty and toward the security offered by the state.

Petitioner shows that forcing a jury to pledge allegiance to a government during a criminal trial is harmful partiality. "The accused of a crime is entitled to have his guilt or innocence determined solely on the basis of the evidence introduced at trial, and not on the grounds of official suspicion, indictment, continued custody or other circumstances not adduced as proof at trial." *Holbrook v.*

Flynn, 475 U.S. 560, 567, 106 S.Ct. 1340, 89 L.Ed.2d 525 (1986).

The right of an accused not to be shackled or in prison garb during trial has been recognized as a part of a fair and impartial trial. See 21 Am.Jur.2d 276, §240. In the same manner, Petitioner urges that loyalty oaths to the government or religious vows have no place in a fair criminal trial.

Long-standing common law and statutory authority in Georgia and other states give trial courts somewhat plenary power over those in their courtrooms. O.C.G.A. §15-1-14(a) states as much:

> "The powers of the several courts to . . . inflict summary punishment for contempt of court shall extend only to cases of: . . .
>
> (3) Disobedience or resistance by any officer of the courts, party, juror, witness, or other person or persons to any lawful writ, process, order, rule, decree, or command of the courts."

See, e.g., *Sacher v. United States*, 343 U.S. 1, 72 S.Ct. 451, 96 L.Ed. 717 (1952). A juror who failed to give the oath or to stand silently would be resisting a command of the court and would be subject to sanction. Just as much as the State of West Virginia could exact criminal sanction on the parents of a non-saluting child in the midst of World War II, here, the trial court had the power of immediate sanction for failure to state the loyalty oath as charged in the beginning of the war on terrorism.

Petitioner's jury was ordered to give an oath loyal to the government. The Petitioner shows that those members of the jury who may have questioned the government

prosecution of Petitioner or questioned the government's use of jail house informants may very well have been chilled of their independent view by the oath and by the circumstance. The prosecutor led the pledge.

This Court should reverse Petitioner's conviction and order a trial free from the taint of coerced loyalty oaths with religious instruction, granting Petitioner the due process most take for granted.

B. This Court Should Discourage Prosecutors From Stipulating Issues Before Defense Proof and Then Contradicting Stipulations in Closing.

This Court has found due process violations in several cases where prosecutors knowingly have introduced and argued from false testimony. A verdict obtained through the use of perjured testimony should be reversed. See *United States v. Bagley*, 473 U.S. 667, 678-80, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985); *Mooney v. Holohan*, 294 U.S. 103, 55 S.Ct. 340, 79 L.Ed. 791 (1935). Also see *Miller v. Pate*, 386 U.S. 1, 87 S.Ct. 785, 17 L.Ed.2d 690 (1967) (prosecutor proffered men's undershorts allegedly stained with murder victim's blood, when stains were actually paint); *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959) (prosecution witness falsely testified that he had not received consideration for his testimony); *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972) (same).

The stipulation of the parties here stated: "There was sufficient evidence to conclude that the boots of Shane August Messick did not make the impression."

Here, the effect of the state arguing from testimony given *prior to the stipulation* is that of an argument from perjured testimony or testimony altered by the stipulation. The stipulation, offered at the end of the prosecution case, appeared to show that the state did not believe the imprint to have come from Petitioner. No doubt, in reliance upon the stipulation, the defense did not elicit testimony about the foot print. Yet, the prosecution closing used facts adduced prior to the stipulation to argue the opposite conclusion: that it could have been Petitioner's footprint.

> "It is fair to say that the average jury, in a greater or less degree, has confidence that these obligations which so plainly rest upon the prosecuting attorney will be faithfully observed. Consequently, improper suggestions, insinuations and, especially, assertions of personal knowledge are apt to carry more weight against the accused when they should properly carry none." *Berger v. United States*, 295 U.S. 78, 55 S.Ct. 629, 79 L.Ed. 1314 (1935).

Apart from the testimony of Petitioner's co-defendant and alleged admissions made to three jail house informants, impeached by Petitioner's trial attorney, no physical evidence tied Petitioner to the scene of the crime. The footprint was the only corroborating piece of evidence to what were stories by the least credible segment of society. Allowing the prosecutor to vary from his stipulation at closing and place Petitioner at the scene of the crime was harmful error which deprived Petitioner of a meaningful chance to confront the evidence. Petitioner asks this Court to redress this violation of his right of confrontation under the *Sixth Amendment* as applicable to the State of Georgia through the Due Process Clause of the *Fourteenth Amendment to the United States Constitution.*

C. This Court Should Clarify That Hearsay Evidence Implicating A Witness Is Reliable When The Witness Kills Himself to Avoid Testifying.

Petitioner proffered testimony from Susan Cotton, an acquaintance of Billy Hicks who after a party at Hicks' home remembers Hicks bragging about committing the murder for which Petitioner was tried and threatening her if she told. The Georgia Supreme Court found that,

> "the trial court properly ruled that Hicks's statements to Cotton, a self-described acquaintance, at the end of an all-day drinking session ten days after the murder lacked sufficient guarantees of trustworthiness and, therefore were not admissible under the necessity exception to the hearsay rule."

In reviewing O.C.G.A. §24-3-8 as applied to Petitioner's case, the Georgia Supreme Court apparently did not consider the stipulation of the parties as to the cause of Hick's death to be relevant to the issue. The stipulation essentially set forth that Hicks killed himself to avoid testifying and is set out below as follows:

> "The State and the Defense in the above-styled case in action stipulate the following statement of James Hicks, father of Billy Hicks: Donna Mosley, girlfriend of Billy Hicks, telephoned James Hicks and told him that Billy Hicks had to be in Polk County to testify in court on Monday, September the 17th between 12:00 p.m. and 1:00 p.m., Eastern Standard Time."
>
> "Donna Mosley told James Hicks and Billy Hicks – and I've told James Hicks that Billy Hicks didn't have a way to get there and Billy was in

> the barn and wouldn't come out. James Hicks went straight to his son's trailer. Billy Hicks then came out of the barn and walked by James Hicks in the yard and went to the trailer and asked Donna Mosley to get him a shirt. James Hicks told him to get another pair of pants, also, because the seat of his pants were dirty. James Hicks then got in the car and waited on his son, Billy."
>
> "Billy Hicks came out and told James that he'd be right back, that he left his billfold in the barn. He was in the barn three to four minutes. James Hicks got out of the car and made it about halfway to the barn. A couple of seconds later, James Hicks heard a gunshot. He went to the barn, went inside and found Billy Hicks dead from an apparent self-inflicted gunshot wound."
>
> "Out of sympathy for the Hicks family, the state and the defense have released the remaining members of the Hicks family from subpoena in this case."

(T-1080,1081, App.-30,31).

Petitioner respectfully suggests that when a witness is so tormented by what they did that they would rather commit suicide than face examination in a court of law, their out of court admission to the act which torments them gains an enhanced level of trustworthiness. In that context, the trial court abused its discretion in forbidding the introduction of the Cotton testimony of Hicks' admission to the crime. Hicks was a subpoenaed witness.

Hearsay testimony by the investigating officer already recorded Hicks' denial of the crime in the prosecution case. (T-594,595,654, App.-20-24). Petitioner's co-defendant

testified that he was at Hicks' home immediately after the killing. (T-946, App.-24,25). Jenna Crawford Carnes testified that Petitioner's co-defendant borrowed her car to take Billy Hicks to Walmart before the murder. (T-1087,1088, App.-31).

No great evidentiary harm would occur if the trial court had allowed the testimony. In fact, if Hicks had subjected himself to cross examination, his prior contradictory admissions to Susan Cotton would have come in as substantive evidence. See *Cuzzort v. State of Georgia*, 254 Ga. 745, 334 S.E.2d 661 (1985). Unfortunately for Petitioner, Hick's prior statements denying the crime *had* come into evidence. (App.-20-24) Petitioner was denied a means of rebutting those statements by the determination that Billy Hicks' suicide was not relevant to the trustworthiness of statements about the murder.

Under *Chambers v. Mississippi,* 410 U.S. 284, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973), Petitioner shows that the admissions of Billy Hicks "bore persuasive assurances of trustworthiness" and were critical to Petitioner's defense. His suicide operates as the persuasive assurance, and to keep the testimony out of Petitioner's case was to violate Petitioner's right under the Due Process Clause of the *Fourteenth Amendment to the United States Constitution.*

VIII. CONCLUSION

Petitioner asks for the Court to reinforce its wartime decision protecting school children from coerced loyalty oaths and extend it to jurors, allowing Petitioner a new trial in which his jurors claim loyalty to no entity except the truth. Petitioner asks for this Court to draw a bright line for prosecutors who renege on stipulations about vital

physical evidence in closing. Finally, Petitioner asks this Court to consider the proof text of a suicide expressly to avoid testifying and facing questions about a murder. Petitioner shows that guilty minds do what Billy Hicks did, and his statement to Susan Cotton was made sufficiently trustworthy to allow Petitioner to make a defense with it. Petitioner asks for certiorari.

Respectfully submitted,

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In the Supreme Court of Georgia

Decided: APR 29 2003

S03A0017. MESSICK v. THE STATE.

FLETCHER, Chief Justice.

A jury convicted Shane August Messick of the malice murder of Thomas James Hampton and Brandi Hampton.[1] Messick contends that the prosecutor violated a stipulation when he argued that the defendant made a bloody footprint found at the murder scene. Because the prosecutor's argument did not violate the parties' stipulation and his statement could be reasonably inferred from other evidence, we affirm.

1. The evidence presented at trial shows that the Hamptons' next-door neighbor heard firecrackers around 9 p.m. on July 2, looked out a window, and saw a red Mustang drive off at a high rate of speed. When she hollered for Brandi Hampton, the Hamptons' young son came running out of the house and across the yard, crying "Mommy's dead." A neighbor who lived across the highway heard six to eight gunshots, ran into her front yard, and saw a small red car taking off "like a scalded dog" towards

[1] The shootings occurred on July 2, 1998, and Messick was indicted on July 21, 1998. A jury found him guilty of two counts of malice murder and one count of cruelty to children on September 21, 2001. The trial court sentenced Messick to two consecutive terms of life imprisonment on the murder counts and a concurrent 20-year term of imprisonment on the cruelty to children count. Messick filed a motion for new trial on October 11, 2001, which was denied on June 25, 2002. Messick filed a notice of appeal on July 24, 2002; the record was filed in the clerk's office on September 5, 2002; and the case was orally argued on January 21, 2003.

town. Two Cedartown residents saw a red car at dusk speed down their narrow street to a cemetery that is located one street over from Messick's house.

Police found the Hamptons lying dead on their living room floor. Tommy Hampton had been shot once in the forehead at close range and three times in the back, and Brandi Hampton had been shot in the head, chest, and arm. A firearms examiner testified that the cartridge cases and bullets recovered at the scene were fired from Messick's FEG 9-millimeter pistol, which police obtained from his family.

Messick's accomplice, Jamie Crawford, pled guilty to the two murders and testified at trial. Crawford said that he borrowed his sister's red Mustang to drive Messick to the Hamptons' house and that Messick shot Tommy Hampton in the head before shooting Brandi Hampton. The state introduced a tape-recorded conversation between Crawford and Messick on July 10 in which Messick says that the gun is gone and "they got us both." In addition, three prisoners testified that Messick told them he killed Tommy Hampton because Hampton owed him money from a drug deal and also because Messick wanted to see what it felt like to take a life. After reviewing the evidence in the light most favorable to the jury's determination of guilt, we conclude that a rational trier of fact could have found Messick guilty of the offenses of malice murder and cruelty to children.[2]

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[2] See *Jackson v. Virginia*, 443 U.S. 307 (99 SC 2781, 61 LE2d 560) (1979).

2. Messick contends that the trial court erred in allowing the State to argue that the bloody footprint found at the murder scene was his print. At the close of the prosecution's case, the parties stipulated that the boots seized from Messick on July 9 did not make the blood shoe impression found on the carpet at the crime scene and that the boots seized from Crawford could not be eliminated as having made the imprint. During closing argument, the prosecutor stated:

> Now there were two defendants, one police officer, three EMTs and one neighbor who went into Tommy and Brand[i] Hampton's house before the scene was secured. . . . But the point is, it certainly could have been Jamie Crawford stepping in the blood, and it could be Shane Messick's foot print in the blood.

OCGA § 17-8-75 provides that trial courts have the duty to interpose and prevent attorneys from making statements on prejudicial matters that are not in evidence. Although it is improper for an attorney during closing arguments to introduce facts that are not in evidence, counsel may draw reasonable inferences or deductions from the evidence.[3] Here, the prosecutor made a reasonable inference from the evidence that either Crawford or Messick could have stepped in the blood and left the footprint while they were leaving the Hamptons' house after the murder. The statement did not violate the State's narrow stipulation, which merely eliminated a single pair of Messick's boots as the source of the footprint; there was

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[3] See *McClain v. State,* 267 Ga. 378, 384 (477 SE2d 814) (1996); *Hicks v. State,* 196 Ga. 671 (27 SE2d 307) (1943).

no stipulation or evidence that the seized boots were the ones he wore that night. As a result, the closing argument did not violate OCGA § 17-8-75 or the defendant's due process right to confront witnesses.

3. Messick contends that the trial court erred in excluding the hearsay statements of Billy Hicks to Susan Cotton that he committed the murders. The trial court properly ruled that Hicks's statements to Cotton were not admissible as the prior inconsistent statement of a co-conspirator because Hicks was not a suspect, much less a co-conspirator, and he did not testify at trial.[4] In addition, the hearsay statements were not admissible as a statement against interest: " 'It is the long-standing rule in this state that declarations to third persons against the declarant's penal interest, to the effect that the declarant, and not the accused, was the actual perpetrator of the offense, are not admissible in favor of the accused at his trial.' "[5] Finally, the trial court properly ruled that Hicks's statements to Cotton, a self-described acquaintance, at the end of an all-day drinking session 10 days after the murder lacked sufficient guarantees of trustworthiness and, therefore, were not admissible under the necessity exception to the hearsay rule.[6]

4. Finally, Messick has shown no error or harm from the reciting of the of [sic] pledge of allegiance after

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[4] See *Brown v. State*, 266 Ga. 633, 635 (469 SE2d 186) (1996).

[5] *Stanford v. State*, 272 Ga. 267, 269 (528 SE2d 246) (2000) (quoting *Timberlake v. State*, 246 Ga. 488 (271 SE2d 792) (1980)).

[6] See *Yancey v. State*, 275 Ga. 550, 553, 556-557 (2002).

observing a moment of silence in memory of the victims of September 11, 2001.

Judgment affirmed. All the Justices concur.

Filed in Open Court, this _____ day of _____, _____
_____ Deputy Clerk

July TERM, 2001

FINAL DISPOSITION SC-6

THE SUPERIOR COURT OF POLK	COUNTY, GEORGIA	FINAL DISPOSITION

THE STATE

VS.

SHANE AUGUST MESSICK

CRIMINAL ACTION NO. 98CR-386

OFFENSES 1) – Murder
2) – Murder
3 & 4) – Felony Murder
5 & 6) – Aggravated Assault
7) – Cruelty to Children

☐ **PLEA:**

☐ NEGOTIATED

☐ GUILTY ON COUNT(S) ___

☐ NOLO CONTENDERE ON COUNT(S) ___

☐ DEFENDANT WAS ADVISED OF HIS/HER RIGHT TO HAVE THIS SENTENCE REVIEWED BY THE SUPERIOR COURTS SENTENCE REVIEW PANEL.

☑ **VERDICT:**

☑ JURY ☑ GUILTY ON COUNT(S) 1, 2, 7

☐ NON-JURY ☑ NOT GUILTY ON COUNT(S) 3,4,5,6

☐ **OTHER DISPOSITION**

☐ NOLLE PROSEQUI ORDER ON COUNT(S) ___

☐ SEE ATTACHED SPECIAL CONDITIONS

☑ **FELONY SENTENCE**
☐ **MISDEMEANOR SENTENCE**

WHEREAS, the above-named defendant has been found guilty of the above-stated offense. **WHEREUPON**, it is ordered and adjudged by the Court that: The said defendant is hereby sentenced to confinement for a period of 1) – Life
2) – Life consecutive to Count I
7) – 20 years concurrent

in the State Penal System or such other institution as the Commissioner of the State Department of Corrections or the Court may direct, to be computed as provided by law. **HOWEVER**, it is further ordered by the Court.

☐ 1) THAT the above sentence may be served on probation

☐ 2) THAT upon service of _____ of the above sentence, the remainder of _____ may be served on probation PROVIDED that the said defendant complies with the general and other conditions herein imposed by the Court as part of this sentence.

If any portion of the above sentence is to be served on probation, said probated sentence shall be subject to all general conditions set forth on the reverse side hereof as well as the special conditions hereafter indicated:

☐ First Offender Treatment

☐ Intensive Probation Supervision

☐ Probation Boot Camp Confinement

☐ _____ shall be suspended upon acceptance into said Center or Camp

☐ Diversion Center Confinement

☐ _____ hours Community Service

☐ Sex Offender Conditions

☐ Detention Center Confinement

☐ A/D Evaluation – Probationer shall comply with All treatment recommendations and pay cost of treatment

☐ Other _____

_____

_____

_____

Defendant shall pay the following as a special condition of probation:

TOTAL FINE 0 PLUS $50.00 OR 10% WHICHEVER IS LESS PURSUANT TO OCGA 15-21-70

Ct. 1 _____ Ct. 4 _____

Ct. 2 _____ Ct. 5 _____

Ct. 3 _____ Ct. 6 _____

STATE PROBATION FEE _____

COUNTY PROBATION FEE _____

RESTITUTION _____

VAP _____

COUNTY SURCHARGE _____

COMMUNITY SERVICE FEE _____

SPINAL INJURY FEE 10% _____

OTHER _____

☐ DEFENDANT SHALL BE GIVEN EQUAL CREDIT FOR ALL RESTITUTION PAYMENTS MADE BY CO-DEFENDANTS.

EVALUATION _____

DUI SURCHARGE _____

50% DRUG FEE _____

CRIME LAB SURCHARGE _____
ATTORNEY FEE _____

THE ABOVE AMOUNT(S) TO BE PAID AS FOLLOWS:
0 _____

_____

IT IS THE FURTHER ORDER of the Court and the defendant is hereby advised that the Court may, at any time, revoke any conditions of this probation and/or discharge the defendant from probation, the probationer shall be subject to arrest for violation of any condition of probation herein granted. If such probation is revoked, the Court may order the execution of the sentence which was originally imposed or may pardon thereof in the manner provided by the law after deducting therefrom the amount of time the defendant has served on probation.

So ordered this 21 day of September, 2001 /s/ W.A. Foster, III
District Attorney J. Osborne/C. Norman Judge, Hon. W.A. Foster, III, Superior Court

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CERTIFICATE OF SERVICE

Certificate of Service – This is to certify and acknowledge that a true and correct copy of this Final Disposition has been delivered in person and the defendant has been duly instructed regarding the conditions as written. This _____ day of _____, _____

_____

IN THE SUPERIOR COURT FOR THE
COUNTY OF POLK

STATE OF GEORGIA

STATE OF GEORGIA	) CRIMINAL CASE
	) NO. 98-CR-386
VS.	)
SHANE AUGUST MESSICK	)

ORDER ON DEFENDANT'S AMENDED MOTION FOR NEW TRIAL

(Filed Jun. 25, 2002)

Defendant's Amended Motion for New Trial having come on for a hearing as scheduled by the Court on April 16, 2002, and argument and briefs having been submitted by both the State and the defendant, and after consideration of the record, oral argument, and briefs submitted, IT IS HEREBY ORDERED that defendant's Amended Motion for New Trial is hereby overruled on all grounds.

SO ORDERED, this 25th day of June, 2002.

/s/ W. A. Foster, III
W. A. Foster, III
Judge, Superior Courts
Tallapoosa Judicial Circuit

CERTIFICATE OF SERVICE

This is to certify that I have this date served a copy of the within and foregoing Order on the following by depositing the same in a properly addressed envelope with sufficient postage affixed in the United States Mail.

Mr. James Osborne
District Attorney
Polk County Courthouse
Cedartown, Georgia 30125

Mr. Todd M. Johnson
Johnson Law
P. O. Box 48
Cohutta, Georgia 30710

This 25th day of June, 2002.

/s/ Wanda Scull
Wanda Scull, Secretary to
Richard C. Sutton, Judge
Tallapoosa Judicial Circuit

IN THE SUPERIOR COURT OF POLK COUNTY
STATE OF GEORGIA

STATE OF GEORGIA *

vs. *

SHANE AUGUST MESSICK, **CASE # 98CR386** *

DEFENDANT *

*

MOTION NO.: 94
MOTION TO PROHIBIT PROSECUTORIAL MISCONDUCT AND TO LIMIT THE PROSECUTOR'S OPENING STATEMENT AND CLOSING ARGUMENT

Comes now Shane A. Messick, by and through his attorneys, and moves this Court to enter an order *in limine* prohibiting illegitimate statements and argument by the prosecution in this case, during voir dire, in opening statements, in closing arguments or at any other time during the trial. This motion is made pursuant to the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States, to Article I, § I, ¶¶ I, II, XI, XIII, XIV, XVI, XXVIII of the Constitution of the State of Georgia, and all other applicable Federal and State law. In support of his motion, Mr. Messick shows as follows:

* * *

Arguing Facts not in Evidence

1.

It is improper for a prosecutor to ague facts not in evidence or to misstate the facts. *Donnelly v. DeChristoforo*, 416 U.S. 637, 94 S.Ct. 1868, 40 L.Ed.2d 431 (1974);

United States v. Warren, 550 F.2d 219, 228-229 (5th Cir. 1977). The American Bar Association's *Standards Relating to the Prosecution Function*, Section 3-5.9, provides:

> It is unprofessional conduct for the prosecutor intentionally to refer to or argue on the basis of facts outside the record . . . unless such facts are matters of common public knowledge based on ordinary human experience or matters of which the court may take judicial notice.

This is particularly important in a capital case, since the Eighth Amendment comes into play in addition to "'the elemental due process requirement that a defendant not be sentenced to death "on the basis of information which he [or she] had no opportunity to deny or explain."'" *Skipper v. South Carolina*, 476 U.S. 1, 7 n.1, 106 S.Ct. 1669, 90 L.Ed.2d 1 (1986) (*quoting Gardner v. Florida*, 430 U.S. at 363). Therefore, the constitution absolutely prohibits the prosecution from arguing 'facts' which have not been subject to proof. It is improper for a prosecutor to argue facts not in evidence or to misstate the facts. The Georgia Supreme Court has found it be "reprehensible for a lawyer in closing argument to misstate the testimony or facts in evidence." *Barnes v. State*, 244 Ga. 302, 260 S.E.2d 40, 44 (1979). *See also Chapman v. State*, 202 Ga.App. 267, 414 S.E.2d 240 (1991) (in aggravated assault trial, reversible error for prosecutor to argue that defendant was driving with suspended license when all he said was the [sic] did not have a license); *State v. Tate*, 191 Ga.App. 7272, 382 S.E.2d 688 (1989) (reversible error to argue that defendant was probably on drugs); *Hall v. State*, 180 Ga.App. 881, 350 S.E.2d 801, 805 (1986); *Williams v. State*, 254 Ga. 508, 330 S.E.2d 353, 355 (1985) ("prosecutor may not . . . inject into his final argument 'matters which

[have] not been proven in evidence") (*quoting Winget v. State*, 138 Ga.App. 433, 437, 226 S.E.2d 608 (1976); *Brown v. State*, 77 Ga.App. 244, 250, 48 S.E.2d 565 (1948) (prosecutor's argument that defendant was "not working" was prejudicial error where there was no evidence of defendant's employment status); *Donnelly v. DeChristoforo*, 416 U.S. 637, 94 S.Ct. 1868, 40 OL.Ed.2d [sic] 431 (1974); *United States v. Warren*, 550 F.2d 219, 228-229 (5th Cir. 1977); American Bar Association's *Standards Relating to the Prosecution Function* §3-5.9. This is particularly important in a capital case, since the Eighth Amendment comes into play in addition to "'the elemental due process requirement that a defendant not be sentenced to death "on the basis of information which he [or she] had no opportunity to deny or explain."'" *Skipper v. South Carolina*, 476 U.S. at 5 n.1 (*quoting Gardner v. Florida*, arguing 'facts' which have not been subject to proof).

* * *

IN THE SUPERIOR COURT OF POLK COUNTY

STATE OF GEORGIA

STATE OF GEORGIA	)	
VERSUS	)	CASE NO.
	)	98-CR-386
SHANE AUGUST MESSICK,	)	
DEFENDANT.	)	

MOTIONS

THE TRANSCRIPT OF THE PROCEEDINGS HEARD BEFORE **THE HONORABLE WILLIAM A. FOSTER, III,** NOVEMBER 1, 1999, POLK COUNTY COURTHOUSE, CEDARTOWN, POLK COUNTY, GEORGIA.

* * *

[111] NINETY-FOUR, MOTION TO PROHIBIT PROSECUTORIAL MISCONDUCT AND TO LIMIT PROSECUTOR'S OPENING STATEMENT AND CLOSING ARGUMENT. WELL –

MR. ALLEY: JUDGE, I THINK –

THE COURT: I'M GOING TO INSTRUCT THE PROSECUTOR NOT TO BE – NOT TO ENGAGE IN MISCONDUCT, AND THERE ARE LIMITATIONS TO WHAT THE PROSECUTOR AND THE DEFENSE CAN SAY IN OPENING STATEMENT AND CLOSING ARGUMENT, AND IT'S MUCH MORE LIMITED IN DEATH PENALTY CASES THAN ANY OTHER CASE. BUT I DON'T KNOW THAT THERE'S MUCH I CAN SAY PRETRIAL OTHER THAN THAT.

MR. CELLA: BASICALLY, WE'RE ASKING FOR THE COURT TO ORDER THE D.A. NOT TO DO ANYTHING ILLEGAL, SO I UNDERSTAND WHAT YOU'RE SAYING.

THE COURT: I'M GOING TO – I'M GOING TO GRANT THAT.

[112] **MR. CELLA:** YOU CAN'T DO IT AHEAD OF TIME, REALLY.

THE COURT: RIGHT. I'M GOING TO GRANT NINETY-FOUR, BUT I THINK –

MR. CELLA: WHAT THIS MOTION DOES DO JUDGE, IS SET FORTH A LOT OF THE IMPROPER ARGUMENTS AND . . .

THE COURT: WELL, WE'LL JUST HAVE TO SEE. OF COURSE, I'M GOING TO GRANT NINETY-FOUR AS TO BOTH SIDES. I DON'T WANT YOU TO DO ANYTHING IMPROPER, EITHER. AND SO I'M GOING TO ADDRESS – APPLY NINETY-FOUR TO BOTH SIDES.

IN THE SUPERIOR COURT OF POLK COUNTY

STATE OF GEORGIA

STATE OF GEORGIA	)	
	)	
VERSUS	)	CASE NO.
SHANE AUGUST MESSICK,	)	98-CR-386
	)	
DEFENDANT.	)	
	)	

JURY TRIAL

(September 10-21, 2001)

EXCERPTS OF THE TRANSCRIPT OF THE
PROCEEDINGS HEARD BEFORE
THE HONORABLE WILLIAM A. FOSTER, III

* * *

[279] A YES, SIR.

Q SHOW YOU STATE'S EXHIBIT NO. 30 AND ASK YOU IF YOU CAN IDENTIFY THAT.

A STATE'S EXHIBIT NO. 30 IS A CLOSEUP PHOTOGRAPH, WITH A SCALE INTRODUCED OR A RULER INTRODUCED TO SHOW SIZE, OF A – WHAT APPEARED TO ME TO BE A PARTIAL BLOODY SHOE IMPRESSION THAT WAS ON THE FLOOR – IF YOU COME IN THE FRONT DOOR AND TURN IMMEDIATELY TO YOUR RIGHT, ON THE CARPETING RIGHT THERE, ON THE RUG, THERE WAS WHAT APPEARED TO BE A PARTIAL BLOODY SHOE IMPRESSION.

(WHEREUPON, STATE'S EXHIBIT NO. 30 WAS IDENTIFIED FOR THE RECORD.)

BY MR. NORMAN:

Q DOES THAT FAIRLY AND ACCURATELY DEPICT THE SCENE AS YOU OBSERVED IT AND AS YOU'VE DESCRIBED?

A YES, SIR, IT DOES.

* * *

[572] TO RECESS A LITTLE EARLY, AND I'M THINKING SOMEWHERE IN THE NEIGHBORHOOD OF 3:00,

3:30, SOMEWHERE IN THERE, SO YOU CAN GO HOME AND COMMUNICATE WITH YOUR FAMILY AND YOUR EMPLOYER. OKAY?

AS I SAID, IN JUST A MINUTE WE'LL RECESS FOR LUNCH, BUT THERE'S ONE THING I WANTED TO DO AT THIS TIME. YOU KNOW, SOME OF US ARE BLACK AND SOME OF US ARE WHITE. SOME OF US ARE CATHOLIC, SOME OF US ARE PRESBYTERIANS, SOME OF US ARE BAPTISTS AND METHODISTS. SOME OF US ARE OF AFRICAN DESCENT, SOME OF EUROPEAN DESCENT AND SOME OF ASIAN DESCENT. BUT THERE'S ONE THING THAT WE ALL HAVE IN COMMON, AND THAT IS WE'RE AMERICANS.

NOW OUR PRESIDENT ASKED US TO TAKE A MOMENT OF SILENCE AT 12:00 NOON – WHICH IT IS NOW – TODAY TO – A SHOW OF SOLIDARITY FOR THIS COUNTRY AND IN MEMORY AND HONOR OF THOSE WHO DIED IN THE RECENT ATTACK ON OUR WAY OF LIFE. SO AT THIS TIME I'M GOING TO ASK US ALL TO STAND. AND AFTER WE GET THROUGH WITH OUR MOMENT OF SILENCE, WE'RE GOING TO HAVE A PLEDGE OF ALLEGIANCE, AND I WANT YOU TO THINK ABOUT THE PLEDGE WHEN YOU SAY IT INSTEAD OF JUST RECITING THE WORDS. THINK ABOUT THE WORDS AND WHAT THEY MEAN.

I PLEDGE ALLEGIANCE TO THE UNITED STATES OF AMERICA AND TO THE REPUBLIC FOR WHICH IT STANDS. ONE [573] NATION UNDER GOD – AND THERE IS NO PAUSE – ONE NATION UNDER GOD, INDIVISIBLE, WITH LIBERTY AND JUSTICE FOR ALL.

LET'S ALL STAND NOW AND HAVE A MOMENT OF SILENCE.

(WHEREUPON, THE COURTROOM STOOD AND OBSERVED A MOMENT OF SILENCE, AS REQUESTED BY THE PRESIDENT OF THE UNITED STATES.)

THE COURT: NOW LADIES AND GENTLEMEN, I WANT TO THANK YOU. AL, IF YOU AND KELLY AND JAMES COULD COME AROUND AND LEAD US IN THE PLEDGE OF ALLEGIANCE, THE FLAG IS BEHIND ME.

(WHEREUPON, THE BAILIFFS AND THE DISTRICT ATTORNEY LED THE COURTROOM IN THE PLEDGE OF ALLEGIANCE.)

THE COURT: THANK YOU, LADIES AND GENTLEMEN, YOU MAY BE SEATED. AT THIS TIME, LADIES AND GENTLEMEN, YOU MEMBERS OF THE JURY, YOU MAY TAKE YOUR PADS AND PENS, GIVE THOSE TO MRS. MOSS AS YOU LEAVE, AND I'M GOING TO ALLOW YOU TO GO TO LUNCH ANYWHERE YOU LIKE, AND PLEASE REMEMBER THE CAUTIONS I GAVE YOU. PUT THE TRIAL OUT OF YOUR MIND AND BE BACK IN THE JURY ROOM AT 1:00 O'CLOCK – 1:00 O'CLOCK. YOU MAY GO AT THIS TIME. THANK YOU.

(WHEREUPON, THE JURY RETIRED FROM THE COURTROOM

* * *

[591] AND SOMEBODY ELSE WERE THE ONES THAT DID THE MURDERS.

A THAT'S WHAT HE SAID.

Q WHO'S THE PERSON THAT SHANE MESSICK SAID WAS PRESENT WITH JAMIE CRAWFORD?

A AN INDIVIDUAL BY THE NAME OF BILLY HICKS, AND WE SUBSEQUENTLY IDENTIFIED HIM AS WILLIAM LLOYD HICKS, GOES BY THE NAME OF BILLY HICKS.

Q AND FROM YOUR EFFORTS, FROM THE INVESTIGATION OF THIS CASE, YOUR INTERVIEWS OF VARIOUS PEOPLE, DID ANYONE EVER INDICATE TO YOU THAT BILLY HICKS WAS INVOLVED IN THIS MURDER, OTHER THAN THE DEFENDANT?

A NO.

Q AND LET ME ASK YOU THIS. YOU DID NOT ARREST SHANE MESSICK NOR JAMIE CRAWFORD UNTIL FRIDAY JULY THE 10TH. IS THAT CORRECT?

A THAT'S CORRECT. CRAWFORD WAS ACTUALLY INFORMED THAT HE WAS BEING CHARGED AT THE GBI OFFICE WHEN WE WERE DOING THE INTERVIEW AND HE HAD GIVEN HIS CONFESSION. AND THEN I HAD CONTACT WITH GROVER HUDGINS, WHO WAS THEN AN ASSISTANT DISTRICT ATTORNEY IN MR. OSBORNE'S OFFICE, AND I WAS SEEKING SOME GUIDANCE AND APPROVAL ABOUT ALLOWING MR. CRAWFORD TO APPROACH MR. MESSICK TO RECORD THESE UNDERCOVER – THIS UNDERCOVER CONVERSATION AND THE UNDERCOVER MEETING. AND SO MR. CRAWFORD WAS TECHNICALLY IN CUSTODY, BUT WE ALLOWED HIM TO WALK TO THAT PARKING LOT AND

WE HAD PLENTY OF PERSONNEL TO MONITOR THAT

* * *

[594] HAVE ALLOWED TIME FOR ONE TO GET HOME ON BROOKS STREET WHERE MR. MESSICK LIVED, CRAWFORD TO GO OUT AND ESTABLISH HIS ALIBI AT BILLY HICKS'S HOUSE, AND THEN GO HOME AND MAKE THAT CALL SOMEWHERE AROUND 10:45, 11:00 O'CLOCK FOR THEM TO MEET AND THEN GO DOWN TO THE WAFFLE HOUSE AND EAT.

Q DID YOU DEVELOP ANY EVIDENCE OF ANY KIND FROM ANY PERSON, OTHER THAN SHANE MESSICK, THAT INDICATED THAT BILLY HICKS WAS INVOLVED IN THIS?

A NO, SIR.

Q DID YOU DEVELOP, FROM ANY SOURCE WHATSOEVER, THAT BILLY HICKS HAD ANYTHING TO DO WITH THIS WEAPON, THE MURDER WEAPON?

A NO. THE ONLY TIME THAT BILLY HICKS'S NAME EVER CAME UP WAS FROM SHANE MESSICK, AND ALSO SHANE MESSICK'S GOOD FRIEND EDDIE WELCHEL. EDDIE WELCHEL RELATED IN AN INTERVIEW THAT WAS ALSO TAPED – AND THERE SHOULD BE A TRANSCRIPT OF THAT INTERVIEW. EDDIE WELCHEL RELATED THAT – EDDIE WELCHEL RELATED THINGS THAT WERE TOLD TO HIM BY SHANE MESSICK, AND HE ADMITS THAT ON THE TAPE.

Q SO DID YOU HAVE ANY EVIDENCE, OTHER THAN SHANE'S ALLEGATION, TO TRY TO CHARGE ANYBODY ELSE WITH THESE MURDERS OTHER THAN JAMIE CRAWFORD AND SHANE MESSICK?

A NO.

Q NOW WERE YOU INVOLVED IN THE RECOVERY OF THE GUN?

A I WAS – I WAS OUT THERE ON THE LOT. I HAD MET – I [595] WAS IN THE VEHICLE, I BELIEVE WITH KELLY MCCLENDON, A DEPUTY WITH THE POLK COUNTY SHERIFF'S DEPARTMENT. KELLY AND I WERE OUT THERE. BUT THE ACTUAL RECOVERY OF THE GUN WAS CONDUCTED BY INVESTIGATOR RANDY BROCK AND INVESTIGATOR RICKY CLARK.

Q DID YOU DO SOME INTERVIEWS WITH – SUBSEQUENT TO THE ARREST, DID YOU BECOME AWARE OF OTHER INFORMATION REGARDING THIS HOMICIDE WHERE YOU DID ANY SUBSEQUENT INTERVIEWS WITH ANY INDIVIDUALS?

A WELL, YES, SIR. I MEAN EVEN THOUGH THE ARREST OF MESSICK AND CRAWFORD OCCURRED ON FRIDAY JULY THE 10TH, I FOLLOWED UP AND I INTERVIEWED BILLY HICKS THE FOLLOWING DAY. THERE WERE ADDITIONAL INTERVIEWS THAT WERE CONDUCTED THROUGH 1998, THE END OF 1998. I THINK THERE WAS ONE OR TWO THAT WAS CONDUCTED IN – THERE WAS ONE ON FEBRUARY THE 5TH, 1999, THERE WAS A RE-INTERVIEW OF JAMIE CRAWFORD. THERE WAS ANOTHER INTERVIEW ON MAY THE 27TH, 2000. LET ME – LET ME GO

BACK. PRIOR TO THOSE, THERE WS AN INTERVIEW ON AUGUST THE 20TH OF JOSEPH RANDALL BAXTER THAT I DID. THERE WAS AN INTERVIEW ON SEPTEMBER THE 23RD, 1998 OF MICHAEL VAN ADAMS. THERE WAS AN INTERVIEW THAT I DID ON FEBRUARY THE 5TH, 1999, WHICH WAS A RE-INTERVIEW OF JAMIE CRAWFORD, WHICH WAS ON VIDEOTAPE.

Q WAS THAT BEFORE HE HAD TENDERED HIS PLEA OF GUILTY TO THE COURT?

A YES SIR, I BELIEVE IT WAS.

Q ALL RIGHT.

* * *

[654] JUST THAT I KNOW HIM WHEN I SEE HIM AND DON'T MIND SPEAKING TO HIM.

Q SO OUT OF THE THREE PEOPLE THAT YOU WERE TOLD WERE THERE WITH JAMIE AND BILLY HICKS, THE ONLY ONE YOU'VE TALKED TO IS STEVE HICKS AND THAT WAS THREE OR FOUR WEEKS AGO.

A THAT'S CORRECT. IN ADDITION TO BILLY HICKS, NOW.

Q IN ADDITION TO BILLY HICKS.

A THAT'S CORRECT.

Q WHO YOU TALKED TO TWO WEEKS AFTER SHANE AND JAMIE WERE ARRESTED. RIGHT?

A ON JULY THE 11TH. SATURDAY JULY THE 11TH.

Q SATURDAY JULY 11TH. BILLY HICKS TOLD YOU HE WAS A DRUNK, HE GOES TO WORK, COMES HOME, GETS DRUNK AND GOES TO BED, AND THAT'S ALL HE KNOWS ABOUT THIS. RIGHT?

A PRETTY MUCH, YES SIR.

Q JAMIE TOLD YOU ALSO, IN THIS FIRST UNRECORDED INTERVIEW, SAID HE DID NOT BORROW JENNA'S CAR THURSDAY NIGHT. RIGHT?

A THAT'S CORRECT.

Q HE TOLD YOU THAT HE HEARD, ALSO, THAT BLACK COKE DEALERS FROM POTASH ROAD KILLED TOMMY HAMPTON BECAUSE HE OWED THEM $5,000. RIGHT?

A WELL, I DON'T KNOW ABOUT THE – THE – YOU KNOW, I'LL HAVE TO FIND THAT PARTICULAR AMOUNT IN THE SUMMARY, BUT HE SAID THAT HE HAD HEARD THAT TOMMY HAD BORROWED OR RIPPED OFF SOME

* * *

[945] BILLY HICKS'S?

A YES, SIR.

Q HOW LONG DID IT TAKE YOU TO GET FROM KILLING THE HAMPTONS TO BEING AT BILLY HICKS'S HOUSE? WHAT'S THAT TIME FRAME?

A I GUESS FOUR OR FIVE MINUTES, SIX MINUTES.

Q YOU'RE SAYING YOU LEFT THE HAMPTONS' HOUSE OUT ON 278. YOU DROVE TO SHANE'S HOUSE, DROPPED HIM OFF AND THEN WENT OUT TO BILLY'S HOUSE ALL IN SIX MINUTES?

A IT DON'T TAKE LONG.

Q AND YOU WERE THERE FOR AN HOUR, AND YOU DON'T KNOW WHAT TIME IT WAS THAT YOU LEFT.

A NO, SIR.

Q WHEN YOU LEFT, WHAT'D YOU DO?

A I WENT HOME.

Q DROVE HOME IN THE RED CAR.

A YES, SIR.

Q TOLD YOUR MOM THAT YOU'D DONE SOMETHING BAD AND YOU WERE LOOKING FOR – AT THE DEATH PENALTY.

A I – YES, SIR.

Q HOW LONG WERE YOU IN THE HOUSE BEFORE SHE THREW YOU OUT?

A I WAS IN THERE I GUESS ABOUT A HOUR.

Q YOU WERE AT BILLY'S –

A THIRTY MINUTES TO A HOUR, SOMETHING LIKE THAT.

[946] Q – BILLY HICKS'S HOUSE FOR ONE HOUR AND HOME WITH YOUR MOM FOR ONE HOUR. RIGHT?

A YES, SIR.

Q AND THEN AT THE END OF THAT HOUR – NOW THIS WOULD BE TWO HOURS AFTER THE KILLING – YOU'RE CALLING SHANE?

A YES, SIR.

Q DOES BILLY HICKS HAVE A TELEPHONE?

A NO, SIR.

Q BILLY HICKS LIVED IN A TRAILER. IS THAT RIGHT?

A YES, SIR.

Q WITH BILLY HICKS' BROTHER, YOU SAID?

A YES, SIR.

Q AND THEY HAD NO PHONE IN THERE?

A NO, SIR.

Q BUT THEY DID HAVE A POLICE SCANNER?

A YES, SIR.

Q WHY DID THEY HAVE A POLICE SCANNER?

A I DON'T KNOW. THEY – HIS BROTHER HAD ONE.

Q HOW MANY TIMES HAVE YOU BEEN OVER THERE?

A A BUNCH.

Q A BUNCH?

A YEAH, I'VE BEEN OVER THERE NUMEROUS TIMES.

Q ALL RIGHT. YOU WERE CLOSER FRIENDS WITH BILLY THAN YOU WERE WITH SHANE, WEREN'T YOU?

A NO, SIR.

* * *

[1078] NUMBER FOUR, THE STATE AND DEFENSE FURTHER STIPULATE THAT THE SHOES/BOOTS SEIZED FROM SHANE AUGUST MESSICK ON OR AFTER JULY 9, 1998, WERE VISUALLY COMPARED TO THE BLOODY SHOE IMPRESSION ON A PIECE OF CARPET FROM THE CRIME SCENE. THERE WAS SUFFICIENT EVIDENCE TO CONCLUDE THAT THE BOOTS OF SHANE AUGUST MESSICK DID NOT MAKE THE IMPRESSION. THE SHOES OR BOOTS SEIZED FROM JAMIE CRAWFORD COULD NOT BE ELIMINATED AS HAVING MADE THE BLOODY SHOE [1079] IMPRESSION ON THE PIECE OF CARPET FROM THE CRIME SCENE.

NUMBER FIVE, THE STATE AND DEFENSE FURTHER STIPULATE THE CONTENTS OF CRIME LAB REPORT NUMBER P98-02792, WHICH HAS BEEN PREVIOUSLY ADMITTED AS STATE'S EXHIBIT NO. 68 – AND THAT CRIME LAB REPORT WILL BE OUT WITH YOU – AND TO THAT END, THE CRIME LAB REPORT MAY BE READ INTO EVIDENCE AND HAS IN FACT BEEN ADMITTED INTO EVIDENCE FOR YOUR REFERENCE.

NEXT, LADIES AND GENTLEMEN, THE STATE AND THE DEFENSE HAVE AGREED TO STIPULATE

THE FOLLOWING FACTS WHICH ARE CONTAINED IN STATE'S EXHIBIT NO. 75, AND YOU ARE TO TAKE THESE AS PROVEN FACTS.

THE STATE AND THE DEFENSE IN THE ABOVE-STYLED CASE IN ACTION STIPULATES THAT JOANN MAXWELL, SISTER OF TOMMY HAMPTON, FOUND A 9MM. SHELL CASING UNDER THE DESK, WHICH IS DESIGNATED AS LETTER D ON THE CRIME SCENE CHART, WHICH IS ADMITTED IN EVIDENCE AS STATE'S EXHIBIT 52, IN THE SAME ROOM WHERE THE BODIES OF TOMMY AND BRANDY HAMPTON WERE FOUND.

NOW STATE'S EXHIBIT 52 IS THE CHART WHICH IS THE DIAGRAM OF THE ROOM WHICH HAS PREVIOUSLY BEEN ADMITTED AND WILL BE OUT IN EVIDENCE WITH YOU.

THE SHELL CASING WAS TAKEN BY JOANN MAXWELL TO THE POLICE ON JULY 10, 1998, AND HAS BEEN EXAMINED BY [1080] BALLISTICS EXPERT KELLY FITE, AND IT IS HEREBY STIPULATED THAT SAID SHELL CASING WAS FIRED FROM STATE'S EXHIBIT NO. 40, THE 9MM. HANDGUN.

NOW, LADIES AND GENTLEMEN, THE LAST STIPULATION OF FACTS ENTERED INTO BY THE STATE AND THE DEFENSE, MARKED STATE'S EXHIBIT NO. 76, READS AS FOLLOWS: THE STATE AND THE DEFENSE IN THE ABOVE-STYLED CASE IN ACTION STIPULATE THE FOLLOWING STATEMENT OF JAMES HICKS, RATHER OF BILLY HICKS: DONNA MOSLEY, GIRLFRIEND OF BILLY HICKS, TELEPHONED JAMES HICKS AND TOLD HIM THAT BILLY HICKS HAD TO BE IN POLK COUNTY TO TESTIFY IN

COURT ON MONDAY, SEPTEMBER THE 17TH BETWEEN 12:00 P.M. AND 1:00 P.M., EASTERN STANDARD TIME.

DONNA MOSLEY TOLD JAMES HICKS AND BILLY HICKS – AND I'VE TOLD JAMES HICKS THAT BILLY HICKS DIDN'T HAVE A WAY TO GET THERE AND BILLY WAS IN THE BARN AND WOULDN'T COME OUT. JAMES HICKS WENT STRAIGHT TO HIS SON'S TRAILER. BILLY HICKS THEN CAME OUT OF THE BARN AND WALKED BY JAMES HICKS IN THE YARD AND WENT TO THE TRAILER AND ASKED DONNA MOSLEY TO GET HIM A SHIRT. JAMES HICKS TOLD HIM TO GET ANOTHER PAIR OF PANTS, ALSO, BECAUSE THE SEAT OF HIS PANTS WERE DIRTY. JAMES HICKS THEN GOT IN THE CAR AND WAITED ON HIS SON, BILLY.

[1081] BILLY HICKS CAME OUT AND TOLD JAMES THAT HE'D BE RIGHT BACK, THAT HE LEFT HIS BILLFOLD IN THE BARN. HE WAS IN THE BARN THREE TO FOUR MINUTES. JAMES HICKS GOT OUT OF THE CAR AND MADE IT ABOUT HALFWAY TO THE BAR. A COUPLE OF SECONDS LATER, JAMES HICKS HEARD A GUNSHOT. HE WENT TO THE BARN, WENT INSIDE AND FOUND BILLY HICKS DEAD FROM AN APPARENT SELF-INFLICTED GUNSHOT WOUND.

OUT OF SYMPATHY FOR THE HICKS FAMILY, THE STATE AND THE DEFENSE HAVE RELEASED THE REMAINING MEMBERS OF THE HICKS FAMILY FROM SUBPOENA IN THIS CASE.

I BELIEVE ALL THIS OCCURRED MONDAY, SEPTEMBER THE 17TH. IS THAT CORRECT, GENTLEMEN?

MR. CELLA: YES, SIR.

MR. OSBORNE: THAT'S CORRECT.

THE COURT: LADIES AND GENTLEMEN, THOSE ARE THE STIPULATIONS OF FACT WHICH THE STATE AND THE DEFENSE HAVE ENTERED INTO. AND AS I TOLD YOU BEFORE, THEY HAVE BEEN ADMITTED INTO EVIDENCE MARKED STATE'S EXHIBITS 53, 75 AND 76, AND YOU ARE TO TAKE THESE AS PROVEN FACTS. THEY WILL BE AVAILABLE FOR YOU TO READ AND EXAMINE DURING YOUR DELIBERATIONS AT THE END OF THE CASE.

ALL RIGHT. THE STATE HAS RESTED IN THIS CASE. THAT MEANS ALL THE EVIDENCE THE STATE HAS TO PRODUCE

* * *

[1087] **BY MR. CELLA:**

Q I'M ASKING BEFORE THAT HAPPENED. THREE'S A POINT IN TIME – WELL, LET'S BACK UP EVEN FURTHER.

A OKAY.

Q DO YOU REMEMBER WHEN JAMIE FIRST CAME TO YOU THAT NIGHT AND ASKED YOU TO BORROW HIS CAR –

A YEAH.

Q – BORROW YOUR CAR?

A I DO REMEMBER.

Q OKAY, TELL US ABOUT THAT.

A HE ASKED ME COULD HE USE MY CAR TO GO TO WAL-MART.

Q OKAY, WHAT DID YOU SAY?

A AT FIRST I WOULDN'T LET HIM 'CAUSE HE'D BEEN DRINKING.

Q OKAY. AND EVENTUALLY I GUESS HE DID TALK YOU INTO IT?

A RIGHT.

Q HOW WAS HE ABLE TO DO THAT?

A JUST KEPT ON.

Q JUST PERSISTENT?

A PERSISTENT.

Q HE WOULDN'T GIVE UP AND FINALLY YOU GAVE IN?

A RIGHT.

Q OKAY. BUT HE DID TELL YOU THAT HE WAS GOING TO TAKE BILLY TO WAL-MART?

[1088] A RIGHT.

Q OKAY. AND DID YOU KNOW BILLY?

A YEAH.

Q DID BILLY HAVE A CAR OR –

A NO.

Q SO IT DIDN'T SURPRISE YOU THAT BILLY MIGHT NEED A RIDE TO WAL-MART?

A RIGHT.

Q DID YOU TELL HIM – YOU KNOW, SOMETIMES WHEN YOU LET PEOPLE BORROW YOUR CAR, YOU MAKE SURE YOU KNOW EXACTLY WHERE THEY'RE GOING TO GO AND EXACTLY WHEN THEY'RE GOING TO COME BACK. DID YOU – IS THAT THE WAY IT WAS?

A NO, I MEAN I JUST LET HIM USE IT. I DIDN'T ASK HIM WHEN HE'D BE BACK.

Q SO HE DIDN'T HAVE A DEADLINE OR –

A NO, HUH-UH.

Q – YOU DIDN'T TELL HIM YOU NEEDED THE CAR BACK AT A CERTAIN TIME?

A. NO.

MR. OSBORNE: YOUR HONOR, IF I COULD ASK HIM NOT TO ASK LEADING QUESTIONS OF HIS WITNESS.

THE COURT: I BELIEVE YOUR QUESTIONS ARE A BIT LEADING. IF YOU WOULD REPHRASE THOSE AND – THIS IS YOUR EXAMINATION.

MR. CELLA: YES, SIR, OKAY.

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[1379] YOU HEAR? DON'T YOU WORRY ABOUT THAT GUN. THAT GUN'S SOMEWHERE SAFE. THEY AIN'T GOING TO FIND THE GUN. HE'S BOLSTERING

JAMIE. HANG IN THERE, JAMIE. HANG IN THERE, BUDDY.

BUT HE SAYS THEY GOT US, JAMIE, AND THEY GOT BOTH OF US. NOW YOU CAN INTERPRET THAT, AS MR. CELLA WOULD SUGGEST, THAT WELL, WHAT SHANE REALLY MEANT WAS THEY GOT YOU FOR MURDER AND THEY GOT ME FOR HIDING IT. WAIT JUST A MINUTE. SHANE – SHANE HAS TAKEN THE GUN, HAD HIS AUNT, HAD HIS MAMA KNOWING ABOUT IT. THE GUN'S OUT OF THE STATE. SHANE KNOWS THE GUN'S GONE. POLICE AIN'T GOING TO FIND THAT GUN UNLESS – BE CAREFUL, JAMIE, KEEP YOUR MOUTH SHUT. IF I WAS YOU, I'D LEAVE TOWN. NO, SHANE AT THAT TIME WAS TRYING TO BOLSTER HIS BUDDY, PUMP HIM UP, HANG IN THERE BECAUSE YOU DON'T WANT TO GO TO PRISON.

NOW THERE WERE TWO DEFENDANTS, ONE POLICE OFFICER, THREE EMTs AND ONE NEIGHBOR WHO WENT INTO TOMMY AND BRANDY HAMPTON'S HOUSE BEFORE THE SCENE WAS SECURED. THOSE PEOPLE WERE WALKING IN THE HOUSE. THEY WERE CHECKING. THEY ROLLED TOMMY HAMPTON OVER TO SEE IF HE WAS ALIVE. AND I'M NOT SECOND-GUESSING THEM. SHOULD THEY HAVE ROLLED HIM OVER? THEY'RE TRYING TO SAVE HIS LIFE, IF THERE'S ANY LIFE THERE. LIFE IS PRECIOUS. THEY WERE TRYING TO DO WHAT THEY [1380] COULD. BUT THE POINT IS, IT CERTAINLY COULD HAVE BEEN JAMIE CRAWFORD STEPPING IN THE BLOOD, AND IT COULD BE SHANE MESSICK'S FOOT PRINT IN THE BLOOD. WHAT DOES SHANE SAY ON THE TAPE WHEN

THEY'RE OUT IN THE PARKING LOT AT HON? I HEARD THEY'VE GOT A BLOODY FOOT PRINT.

SHANE MESSICK – THERE'S ALL KIND OF STUFF SWIRLING AROUND. HE'S TALKING TO THE POLICE. THEY'RE TALKING AND YEAH, THEY'RE GOING TO SAY WE'VE GOT THIS, WE'VE GOT THAT. THEY'RE HOPING THAT THESE GUYS WILL TALK TO THEM. WHAT IS MR. FOSTER GOING TO DO, GO IN ANY [sic] SAY YOU KNOW WHAT, WE GOT A – WE GOT A RED MUSTANG LEAVING THE SCENE OF A MURDER SCENE. THAT'S WHAT WE'VE GOT. NOW, WERE YOU INVOLVED? THAT WOULD HAVE BEEN SUBSTANTIALLY THE TRUTH.

MR. FOSTER SAYS YOUR NAMES ARE COMING UP IN THIS. YOU'RE RIGHT IN THE MIDDLE OF THIS. AND SHANE IMMEDIATELY BEGINS HIS LYING AND CONNIVING AND TRYING TO CONCEAL. FOLKS, THE WAGES OF SIN IS DEATH. WE KNOW THAT, AND IN THIS CASE THAT HAS COME TRUE. IN THIS CASE YOU HAVE A CLEAR CHOICE. YOU CAN SAY WE'RE GOING TO LOOK AT THIS AND WE'RE GOING TO SAY THAT THERE IS REASONABLE DOUBT BECAUSE WE DON'T KNOW WHERE THE ASSAILANT WAS STANDING, THE GUN – BULLETS WERE FIRING AROUND.

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